(19,079.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 123.

JOHN ROONEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF NORTH DAKOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

INDEX.

	Original.	Print.
Writ of error.....(omitted in printing)..	*a*	—
Order extending time to file record.....(" ")..	*d*	—
Return to writ of error.....(" ")..	*e*	—
Transcript from district court .....(" ")..	1	—
Notice of appeal.....(" ")..	1	—
Information	2	1
Notice of motion to add names to information (omitted in printing).....	6	—
Charge to jury.....(omitted in printing)..	7	—
Verdict.....(" ")..	21	—
Judgment, March 20, 1903.....	22	3
Warrant for execution	23	4
Receipt for prisoner.....	24	4
Order to show cause.....	25	5
Petition to modify judgment, &c.....	25	5
Judgment, March 31, 1903.....	27	7
Minutes of trial..... (omitted in printing)..	30	—
Judgment, March 20, 1903.....	43	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 21, 1904.

	Original.	Print
Order of March 27, 1903	44	9
Minutes of pronouncing judgment	45	10
Reasons against pronouncing judgment	46	10
Judgment of March 31, 1903	47	11
Clerk's certificate (omitted in printing)	48	—
Argument and submission	49	12
Judgment	50	12
Opinion (omitted in printing)	53	—
Assignment of errors (" ")	70	—
Petition for writ of error (" ")	71	—
Order allowing writ of error	72	—
Clerk's certificate (omitted in printing)	73	—
Statement of errors on which plaintiff in error intends to rely and designation of parts of record to be printed	74	13

* * * * * * *

a–2 STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

THE STATE OF NORTH DAKOTA }
vs. }
JOHN ROONEY, Defendant. }

Information for Murder in the First Degree.

To the district court in and for said county:

Emerson H. Smith, State's attorney in and for said county and State, in the name and by the authority of the State of North Dakota, informs this court that heretofore, to-wit: on the twenty-sixth day of August in the year of our Lord one thousand nine hundred and two, at the county of Cass, in the State of North Dakota, the defendant, John Rooney, late of the county of Cass and State aforesaid, did commit the crime of murder in the first degree, committed as follows, to-wit: That at said time and place the said defendant, together with two other persons whose names are to this informant unknown and each being then and there armed with and holding in his hand a deadly weapon, to-wit: a firearm commonly called a revolver, did, without authority of law, willfully, feloniously and with the premeditated design to effect the death of one Harold C. Sweet, then and there, said revolvers, which said revolvers were then and there loaded with metallic cartridges containing gunpowder and leaden bullets, then and there shoot off and discharge at, against and upon the said Harold C. Sweet and the body of the said Harold C. Sweet, then and there, hit, strike and penetrate with one of said leaden bullets, and did, thereby and by thus hitting, striking and penetrating the body of the said Harold C. Sweet with one of said leaden bullets then and there, without authority of law, willfully and feloniously and with the premeditated design to effect the death of the said Harold C. Sweet, inflict, cause and create in and near the back, right shoulder, right lung and right side of his the said Harold C.
3 Sweet's body certain mortal wounds and injuries, of which said mortal wounds and injuries the said Harold C. Sweet thence continually languished until later, on to-wit: the 26th day of August, 1902, he then died at, to-wit: Moorhead, Clay county, Minnesota; and so the defendant did, in manner and form and at the time aforesaid, at said county of Cass in the State of North Dakota, without authority of law, willfully, feloniously and with the premeditated design to effect his death, kill and murder the said Harold C. Sweet, this contrary to the statute in such case made and

provided and against the peace and dignity of the State of North Dakota.

And the State's attorney aforesaid, in manner and form aforesaid, in the name and by the authority of the State of North Dakota, further informs this court that heretofore, to-wit: on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and two, at the county of Cass in the State of North Dakota, the defendant, John Rooney, late of the county of Cass and State aforesaid, did commit the crime of murder in the first degree, commit-ed as follows, to-wit: That at said time and place, said defendant, John Rooney, together with two other persons whose names are to this informant unknown, did, conjointly, each being then and there armed with a deadly weapon, to-wit: a revolver loaded with metallic cartridges containing gunpowder and leaden bullets, in and upon Raymond H. Sweet, Harold C. Sweet and Wallace C. Sweet an assault feloniously make and threaten to shoot, and they, and each of them, the said Raymond H. Sweet, Harold C. Sweet and Wallace C. Sweet in fear of an immediate and unlawful injury to his person did then and there put, and then and there in manner and form aforesaid, by such assault, threats, force and fear, one watch and chain, of the value of ten dollars, of the personal property of the said Raymond H. Sweet, then and there from the person and against the will of the said Raymond H. Sweet and one watch and chain, of the value of ten dollars, of the personal property of the said Harold C. Sweet, then and there from the person and against the will of the said Harold C. Sweet, and
4–21 one watch and chain, of the value of ten dollars, of the personal property of the said Wallace C. Sweet, then and there from the person and against the will of the said Wallace C. Sweet did, conjointly and feloniously, obtain and take and the same then and there feloniously steal and carry away, and did, then and there, while so as hereinbefore shown committing the aforesaid felony, to-wit: robbery, said revolvers shoot off and discharge at, upon and against the said Harold C. Sweet and the body of the said Harold C. Sweet, then and there, hit, strike and penetrate with one of said leaden bullets, and did, thereby and by thus then and there hitting, striking and penetrating the body of the said Harold C. Sweet with one of said leaden bullets then and there, inflict, cause and create in and near the back, right shoulder, right lung and right side of his, the said Harold C. Sweet's body certain mortal wounds and injuries, of which said mortal wounds and injuries the said Harold C. Sweet thence continually languished until later on to-wit: the 26th day of August, 1902, he then died at, to-wit: Moorhead, Clay county, Minnesota: and so the said defendant did, in manner and form and at the time aforesaid, and while conjointly with said other two persons, whose names are to this informant unknown, engaged in the commission of a felony, to-wit: robbery, as hereinbefore shown, without authority of law, willfully, feloniously and with the premeditated design to effect the death of the said Harold C. Sweet,

kill and murder the said Harold C. Sweet, this contrary to the statute in such case made and provided and against the peace and dignity of the State of North Dakota.

Dated at Fargo, North Dakota, this 8th day of December, 1902.

EMERSON H. SMITH,
State's Attorney within and for Cass County, North Dakota.

* * * * * * *

22 STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

STATE OF NORTH DAKOTA, Plaintiff, }
vs.
JOHN ROONEY, Defendant. }

This matter coming on to be heard before this court on this twentieth day of March, A. D. 1903, on motion of State's attorney in and for Cass county, for sentence and judgment upon a verdict heretofore rendered by the jury in the above entitled action, on the twenty-eighth day of January, A. D. 1903, wherein the jury rendered a verdict in substance as follows: "We, the jury empanelled to try the above entitled action, do find the defendant, John Rooney, guilty of murder in the first degree, and affix the death penalty;"

Present: The Honorable Charles A. Pollock, judge of the third judicial district and the officers of the court. The State appearing by the State's attorney, Emerson H. Smith, and the defendant appearing with his attorney, W. S. Stambaugh, Esquire, and now on motion of the State's attorney for judgment and sentence in the above entitled action, and no legal reason assigned why judgment should not now be pronounced, it is by the court,

Ordered, adjudged and decreed, that you, John Rooney, as a punishment for the offense of murder in the first degree committed by you on the twenty-sixth day of August, A. D. 1902, be conveyed to the penitentiary of the State of North Dakota, situated, and located in the city of Bismarck, in said State, and within an enclosure in said building, to be erected, for that purpose, you be by the warden of said penitentiary, or in case of his inability to act, or his absence therefrom, by the deputy warden of said penitentiary, before the hour of sunrise, on the twenty-sixth day of June, A. D. 1903, you be hanged by the neck until you are dead.

Dated March 20th, A. D. 1903.

By the court,

CHAS. A. POLLOCK, *Judge.*

(Endorsement: Filed in the office of clerk of district court, Cass Co. N. Dak. March 20th 1903 E. C. Sargent clerk by W. H. Aymer, deputy.)

23 STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

STATE OF NORTH DAKOTA, Plaintiff, }
vs.
JOHN ROONEY, Defendant. }

Warrant.

The State of North Dakota to the sheriff of Cass county, North Dakota, or his deputy duly appointed, and to the warden, or, in case of his death, inability, or absence, to the deputy warden of the penitentiary of the State of North Dakota, at Bismarck, or to the person or persons duly authorized by law to perform the execution of persons sentenced to death within said State, Greeting:

You are hereby commanded and directed within ten days from the date hereof, in as private and secure a manner as possible to be done, to convey John Rooney, the above named defendant, to the North Dakota penitentiary, at Bismarck, where he shall be received by the warden of the same, and securely kept until Friday, the 26th day of June, A. D. 1903, and on said date, to-wit, Friday, June 26th, 1903, before the hour of sunrise of said day, within an enclosure to be prepared for that purpose within the walls of the North Dakota penitentiary, at Bismarck, to hang the said defendant John Rooney by the neck until he is dead.

Hereof fail not at your peril.

Done in open court this 20th day of March, A. D. 1903.

By the court:

CHAS. A. POLLOCK, *Judge.*

Attest: E. C. SARGENT,
Clerk District Court, Cass County, North Dakota. [SEAL.]

24 STATE PENITENTIARY,
BISMARCK, NORTH DAKOTA, *March 21st*, 1903.

To the State auditor.

SIR: I have this day received from Treadwell Twichell, sheriff of Cass county, attended by the following named guard: L. L. Twichell, the following named convict: John Rooney, sentenced to imprisonment in this penitentiary.

Crime, murder; penalty, death sentence.

N. F. BOUCHER, *Warden,*
Per MABEL BOUCHER.

25 STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

STATE OF NORTH DAKOTA }
vs. }
JOHN ROONEY, Defendant. }

Upon reading and filing the annexed petition of Emerson H. Smith, and the court being fully advised in the matter, it is

Ordered, that the defendant be brought before this court on the 31st day of March, A. D. 1903, at the court house in the city of Fargo, at the hour of ten a. m., and then and there show cause if any there be, why said judgment as heretofore pronounced should not be vacated and set aside, and sentence be passed and judgment entered in conformity with the law of March ninth, A. D. 1903.

It is further ordered, that this notice be served upon Honorable W. S. Stambaugh and upon the defendant personally, not later than March 30th, A. D. 1903.

Done in open court this twenty-seventh day of March, A. D. 1903.

By the court:

CHAS. A. POLLOCK, *Judge.*

STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

STATE OF NORTH DAKOTA }
vs. }
JOHN ROONEY, Defendant. }

Your petitioner, Emerson H. Smith, respectfully shows to this court, that he is the duly elected, qualified and acting State's attorney in and for Cass county, North Dakota, and has been ever since the seventh day of January, A. D. 1901. That on the ninth day of December, A. D. 1902, he filed in the office of the clerk of the district court, an information in writing, charging the defendant John Rooney with the crime of murder in the first degree.

That thereafter and on the twenty-second day of January, A. D. 1903, the above entitled action was brought on for trial be-
26 fore a jury duly empanelled to try said case.

That thereafter and on the twenty-eighth day of January, A. D. 1903, the jury duly empanelled, rendered a verdict in the following form,

" We, the jury empanelled and sworn to try the above entitled action, did find the defendant, John Rooney, guilty of murder in

the first degree, as he stands charged in the information, and we hereby fix and determine that the defendant shall be punished by death.

Dated January twenty-eighth, 1903.

JOHN REED, *Foreman.*"

That thereafter and on the twentieth day of March, A. D. 1903, on motion of the State's attorney for judgment and sentence in the above entitled action, and upon the verdict above recited, the court then and there imposed the following sentence;

"That you, John Rooney, as a punishment of the offence of murder in the first degree, committed by you on the twenty-sixth day of August, A. D. 1902, be conveyed to the penitentiary of the State of North Dakota, situated and located in the city of Bismarck, and in said penitentiary, within an enclosure in said building, to be erected in said building, be by the warden of said penitentiary or in case of his inability, or his absence therefrom, by the deputy warden of said penitentiary, before the hour of sunrise, on the twenty-sixth day of June, A. D. 1903, you be hanged by the neck until you are dead.

Dated March twentieth, A. D. 1903.

By the court:

CHARLES A. POLLOCK, *Judge.*"

That your petitioner respectfully shows to this court that on the ninth day of March, A. D. 1903, and before the date of sentence and judgment herein, there was approved by the governor of the State of North Dakota, a certain bill that had been introduced and passed by the legislature of the State of North Dakota, requiring execution of the death penalty to take place at the State penitentiary at Bismarck. That among other provisions of said bill, the execution of a person, charged with murder in the first degree, wherein the death penalty was inflicted, could not be executed until six months from the date of the passing of sentence and judgment. That under the conditions of the bill as above recited, the sentence heretofore pronounced by this court and the judgment entered
27 pursuant thereto, was ineffective, in this: that the execution was ordered to take place in a shorter time than provided by said bill.

Wherefore, your petitioner prays that the defendant may be brought before this court at a time and place to be named by this court, for the purpose of modifying said judgment and sentence heretofore pronounced and entered, changing and enlarging the time in which such execution of said defendant shall take place, and that said judgment as entered and said sentence as passed, be vacated and set aside.

EMERSON H. SMITH.

Subscribed and sworn to before me this 21st day of March, A. D. 1903.

[SEAL.] SANFORD F. REESE,
Notary Public for Cass County, N. D.

My commission expires March 4th, 1909.

STATE OF NORTH DAKOTA, }
County of Cass. }

In District Court, Third Judicial District.

STATE OF NORTH DAKOTA }
vs. }
JOHN ROONEY, Defendant. }

The above entitled matter coming on to be heard before this court on this 31st day of March, A. D. 1903, on motion of the State's attorney in and for Cass county, for sentence and judgment upon a verdict heretofore rendered by the jury in the above entitled action on the 28th day of January, A. D. 1903, wherein the jury rendered a verdict in substance as follows: "We, the jury, empanelled to try the above entitled action, do find the defendant, John Rooney, guilty of murder in the first degree, and affix the death penalty."

Present: The Honorable Charles A. Pollock, judge of the third judicial district, and the officers of the court. The State appearing by the State's attorney, Emerson H. Smith, Esq., and the assistant State's attorney, W. H. Barnett, Esq., and the defendant appearing in person and with his attorney, W. S. Stambaugh, Esq., and
28 the judgment and sentence which was erroneously and inadvertently entered herein March 20, 1903, having been, upon due notice to defendant and his counsel, at this time in open court vacated and set aside,

Now the State's attorney moves for judgment and sentence in the said action, and the defendant being asked to state if he has any legal reason to assign why judgment should not now be pronounced, through his counsel makes answer as follows:

"Yes sir, if your honor please, the defendant as a reason why sentence should not be pronounced against him upon the verdict in this case, says, first that the law providing the penalty for the offense with which he is charged in this case, which was in force at the time the offense is alleged to have been committed, has been repealed, without any saving clause. Second, the law of March 9, 1903, providing the punishment for the offense with which the defendant is charged in this case is *ex post facto* and null and void. And, third, that under the judgment and sentence heretofore passed and entered in this case, the execution of that judgment had been commenced, and this defendant confined in the penitentiary under that judgment, in close confinement."

And the court having heard the said motion, objections and the arguments thereon by counsel for both parties, and being fully advised in the premises, now orders that said application and motion to discharge the defendant without pronouncing judgment be and the same is hereby denied.

And upon a renewal of the motion for judgment by the State's attorney, it is by the court,

Ordered, adjudged and decreed, that you, John Rooney, as a punishment for the offence of murder in the first degree, committed by you on the twenty-sixth day of August, A. D. 1902, and of which you stand convicted in this court, within ten days from the date hereof, be conveyed to the penitentiary of the State of North Dakota, situated and located in the city of Bismarck, in said State, there to be kept in close confinement until October ninth, 1903, and within an enclosure in said building, to be erected for that purpose within the walls of said penitentiary, by the warden of said penitentiary, or in case of his inability to act or his absence therefrom, by the deputy warden of said penitentiary, before the hour of sunrise, on the ninth day of October, A. D. 1903, you be hanged by the neck until you are dead. And may the Lord have mercy on your soul.

29–42

To which orders, judgment and sentence, counsel for defendant objects and excepts, which exception is allowed and made a part of the record.

Dated March 31st, 1903.

By the court:

CHAS. A. POLLOCK, *Judge.*

* * * * * * *

43 District Court, Cass County, North Dakota, February Term, A. D. 1903.

MARCH 20TH, 1903.

Court convened pursuant to adjournment at 2 o'clock p. m.

Present: Hon. Chas. A. Pollock, judge presiding, and the officers of the court.

Court was duly opened.

STATE OF NORTH DAKOTA, Plaintiff,
vs.
JOHN ROONEY, Defendant.

This matter coming on to be heard before this court, on motion of Emerson H. Smith, State's attorney in and for the county of Cass, State of North Dakota, for sentence and judgment upon a verdict heretofore rendered by the jury in the above entitled action, on the 28th day of January, A. D. 1903, wherein the jury rendered a verdict of guilty of murder in the first degree, and affixed the death penalty.

And the defendant appearing in person and W. S. Stambaugh, his attorney.

Now, on motion of said State's attorney for judgment and sentence in the above entitled action; now at this time the court asks defendant if he had any legal reason to show why judgment should not now be pronounced, and no legal reason being shown, it is, by the court,

44 Ordered, adjudged and decreed, that you, John Rooney, as a punishment for the crime of murder in the first degree, committed by you on the 26th day of August A. D. 1902, be conveyed to the penitentiary of the State of North Dakota, situated and located in the city of Bismarck, in said State, and within an enclosure in said building, to be erected, for that purpose, you be by the warden of said penitentiary, or in case of his inability to act, or his absence therefrom, by the deputy warden of said penitentiary, before the hour of sunrise, on the 26th day of June, A. D. 1903, you be hanged by the neck until you are dead.

Defendant is remanded to the custody of the sheriff.

District Court, Cass County, North Dakota, February Term, A. D. 1903.

MARCH 27TH, 1903.

Court convened pursuant to adjournment at 9:30 o'clock, a. m.

Present: Hon. Chas. A. Pollock, judge presiding, and the officers of the court.

Court being duly opened.

STATE OF NORTH DAKOTA, Plaintiff,
vs.
JOHN ROONEY, Defendant.

And now at this time, in open court, the State's attorney by affidavit duly filed calls the attention of the court to an irregularity in the sentence of the above named defendant John Rooney, all of which appears upon the fact of the judgment and sentence in said action, which occurred at this present term of court on the 20th day of March, 1903, in this, to-wit: that the said judgment and sentence required the execution of the said Rooney to take place on Friday, the 26th day of June, 1903, and was rendered under the provisions of section 8305, of the Revised Codes of 1899;

Whereas the said section 8305 was amended by the present legislature by an act approved March 9th, 1903, and which on that day became a law, so that "The date of execution must not be less than six months after the day in which the judgment is entered,

45 and not longer than nine months thereafter," from which judgment upon the face thereof it manifestly appears that the judgment of the court heretofore rendered was irregular and void; therefore, upon motion of the State's attorney, it is now

Ordered, that a bench warrant issue directed to the sheriff of Cass county, North Dakota, and to the warden of the penitentiary of said State, requiring the sheriff to forthwith proceed to Bismarck and take the said Rooney and return him to the county jail of said Cass county, to be resentenced in due compliance with law; and the warden of the said penitentiary is hereby directed and commanded to turn over to the sheriff of said Cass county the person of the said defendant, John Rooney, to be returned to Cass county, as aforesaid.

Dated March 27th, 1903.

By the court:

CHAS. A. POLLOCK, *Judge.*

District Court, Cass County, North Dakota, February Term, A. D. 1903.

MARCH 31ST, 1903.

Court convened pursuant to adjournment at 10 o'clock a. m.

Present: Hon. Chas. A. Pollock, judge presiding, and the officers of the court.

Court was duly opened.

STATE OF NORTH DAKOTA, Plaintiff,
vs.
JOHN ROONEY, Defendant.

Now comes W. H. Barnett, assistant State's attorney in and for Cass county, North Dakota, this being the time fixed for the hearing of the order to show cause why the judgment pronounced by the court on March 20th, 1903, in the above entitled action should not be vacated and set aside.

Defendant being present with his counsel W. S. Stambaugh, Esq., in open court.

Now W. H. Barnett, assistant State's attorney, moves the court to vacate and set aside said judgment on the ground and for the reason that said judgment was void.

46 Now counsel for defendant states to the court that he had nothing to say against the said judgment being set aside and vacated.

Whereupon the court grants said motion, and vacates and sets aside said judgment.

Now at this time assistant State's attorney moves the court to pronounce judgment upon John Rooney, defendant, in accordance with the verdict returned January 28th, 1903, and according to the law approved March 9th, 1903.

Now the court asks defendant if he had any legal cause to show why judgment should not be pronounced against him;

Now comes W. S. Stambaugh, counsel for defendant, and presents to the court legal reasons why judgment should not be pronounced upon defendant at this time, as follows: "Yes sir, if your honor

please, the defendant, as a reason why judgment should not be pronounced against him upon the verdict in this case, says,

First. That the law providing the penalty for the offense with which he is charged in this case, which was in force at the time the offense is alleged to have been committed, has been repealed, without any saving clause.

Second. The law of March 9th, 1903, providing the punishment for the offense with which the defendant is charged in this case is *ex post facto*, and null and void; and,

Third. That under the judgment and sentence passed and entered in this case, the execution of that judgment had been commenced and this defendant confined in the penitentiary under that judgment, in close confinement."

Now the court hears the arguments of counsel for both parties.

Now defendant is remanded to the custody of the sheriff.

Now court takes recess until 4 o'clock p. m.

Court reconvened after recess at 4 o'clock p. m., with all the officers of the a. m. present.

STATE OF NORTH DAKOTA, Plaintiff,
vs.
JOHN ROONEY, Defendant.

47 & 48 State's Attorney Emerson H. Smith and W. H. Barnett, assistant State's attorney, being present.

Defendant, with his counsel, W. S. Stambaugh, being also present.

The assistant State's attorney states to the court that after consultation with Emerson H. Smith, State's attorney, they had decided to submit the case to the court without further argument. Now the court having heard the motion, objections and the arguments thereon, by counsel for both parties, and being fully advised in the premises, now

Orders, that said application and motion to discharge the defendant without pronouncing judgment be and the same is hereby denied.

The court in overruling the objections of counsel for defendant, delivered his written opinion which opinion is filed as a part of the record in the case, and proceeded to pronounce judgment, with the defendant standing at the bar of the court, in words as follows, viz:

It is by the court, ordered, adjudged and decreed, that you, John Rooney, as a punishment for the offense of murder in the first degree, committed by you on the twenty-sixth day of August, A. D. 1902, and of which you stand convicted in this court, within ten days from the date hereof, be conveyed to the penitentiary of the State of North Dakota, situated and located in the city of Bismarck, in said State, there to be kept in close confinement until October ninth, 1903, and within an enclosure in said building, to be erected for that purpose within the walls of said penitentiary by the warden of said penitentiary, or in case of his inability to act, or his absence

therefrom, by the deputy warden of said penitentiary, before the hour of sunrise, on the ninth day of October, A. D. 1903, you be hanged by the neck until you are dead. And may the Lord have mercy on your soul.

To which orders, judgment and sentence, counsel for defendant objects and excepts, which exception is allowed and made a part of the record.

Dated March 31st, 1903.

By the court:

CHAS. A. POLLOCK, *Judge.*

* * * * * * *

49 On the 2nd day of May, A. D. 1903, at page 487 of the Minute Record of the supreme court of the State of North Dakota, as contained in Minute Record Book B, there appears the following language:

Now the court called for argument.

STATE OF NORTH DAKOTA, Respondent,
vs.
JOHN ROONEY, Appellant. } File No. 1110.

Appearances: For the appellant, W. S. Stambaugh; *contra*, W. H. Barnett, assistant State's attorney for Cass county.

Cause argued, submitted and taken under advisement.

On the 24th day of June, A. D. 1903, there was filed in this office an order in said cause, which order is in words and figures as follows, to wit:

50 STATE OF NORTH DAKOTA, } *ss:*
In the Supreme Court,

STATE OF NORTH DAKOTA, Plaintiff and Respondent,
vs.
JOHN ROONEY, Defendant and Appellant. } File No. 1110.

Appeal from the district court of Cass county.

This action coming on to be heard at the March, A. D. 1903, term of this court, at the supreme court room, in the city of Bismarck, State of North Dakota:

Present: N. C. Young, chief justice; D. E. Morgan and J. M. Cochrane, associate justices, and the appeal herein having been argued by W. S. Stambaugh for the appellant, and by W. H. Barnett for respondent, and the court having advised thereon, it is now here considered, ordered and adjudged, that the judgment of the said district court within and for said Cass county, appealed from herein, be and the same is hereby affirmed.

And it is further ordered, that this cause be and it is hereby remanded to the district court for further proceedings according to law, and the judgment of this court.

Dated June 24, 1903.

By the court,

N. C. YOUNG,
Chief Justice.

[Seal of the Supreme Court of North Dakota.]

Attest:
R. D. HOSKINS, *Clerk.*

51–73 [Endorsed:] File No. 1110 In the supreme court State of North Dakota State, plaintiff and respondent, *vs.* Rooney, defendant and appellant. Filed in court this 24 day of June, 1903. R. D. Hoskins, clerk.

* * * * * * *

74 In the Supreme Court of the United States.

JOHN ROONEY, Plaintiff in Error,
vs.
THE STATE OF NORTH DAKOTA, Defendant in Error. } Assignment of Errors.

Statement of Errors on Which Plaintiff in Error Intends to Rely.

That in and by the said record and proceedings it appears that the judgement of the supreme court of the State of North Dakota which affirmed the judgement and sentence of the district court of said State in and for the county of Cass, and was rendered and given against the said John Rooney, should have been rendered and given in his favor, and should have reversed said judgement and sentence of the said district court of the State of North Dakota.

1. Because said judgement and sentence of said district court so as aforesaid affirmed by said supreme court was not authorized by the law in force at the time of the commission of the crime upon which said judgement was rendered, and for the punishment of which said sentence was imposed.

2. Because said judgement so rendered and sentence so imposed were rendered and imposed under and in pursuance to a statute of the State of North Dakota passed after the commission of said crime.

75 3. Because said statute under and pursuant to which said judgement was rendered and said sentence imposed inflicts upon the said John Rooney a different and greater punishment than the law annexed to said crime at the time it was committed, and alters the situation of the said John Rooney to his disadvantage.

4. Because said judgement rendered and sentence imposed inflict upon the said John Rooney a different and greater punishment than the law annexed to said crime at the time it was committed, and alters the situation of the said Rooney to his disadvantage.

5. Because said law under and pursuant to which said judgement was rendered and said sentence imposed is *ex post facto* as to said crime and as to said Rooney, and void.

Portions of Record Designated to be Printed by Plaintiff in Error.

Print pages 2, 3, and 4, down to and including words "for Cass county, North Dakota," pages 22, 23, 24, 25, 26, 27, 28, and 29, page 43 commencing at the words "district court, Cass county, North Dakota," pages 44, 45, 46, 47, 49, 50 and 51.

To the above named defendant and Emerson H. Smith and W. H. Barnett, its attorneys:

You will please take notice that the foregoing is a statement of the errors on which plaintiff in error intends to rely, and a designation and statement of the parts of the record which he thinks necessary for the consideration thereof.

Dated Sept. 23rd, 1903.

SETH NEWMAN,
B. F. SPALDING,
Att'ys for Pl'ff in Error.

76 Due service of the above and foregoing statement and notice by copy admitted this 23rd day of September, 1903.

EMERSON H. SMITH &
W. H. BARNETT,
Att'y- for Def't in Error.

[Endorsed:] Original. In the Supreme Court of the United States. John Rooney, plaintiff in error, against The State of North Dakota, defendant in error. Notice and statement of errors relied on and designation of parts of record to be printed.

77 [Endorsed:] File No. 19,079. Supreme Court U. S., October term, 1903. Term No. 428. John Rooney, pl'ff in error, *vs.* The State of North Dakota. Statement of errors & designation of parts of record P. E. desires printed. Filed Oct. 30", 1903.

Endorsed on cover: File No. 19,079. North Dakota supreme court. Term No. 123. John Rooney, plaintiff in error, *vs.* The State of North Dakota. Filed September 28, 1903. File No. 19,079.